

**IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU**
(Criminal Jurisdiction)

CRIMINAL CASE No.1607 OF 2016

PUBLIC PROSECUTOR

- v -

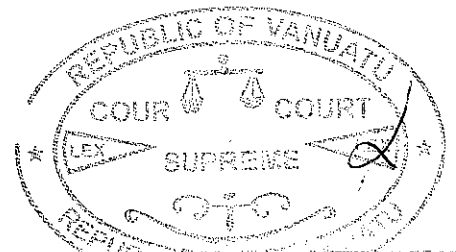
KATIPA KEIMIT

Coram: V. LunabeK CJ

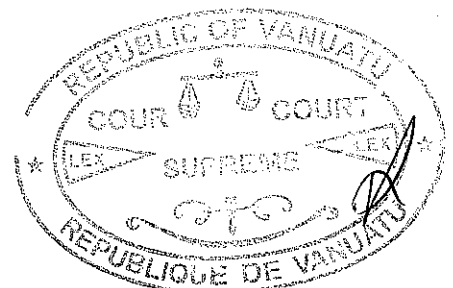
Counsel: Mr Tristan Karae for Public Prosecutor
Ms Pauline Kalwatman for the Defendant

SENTENCE

1. Katipa Keimit you appear to receive your sentence. You were charged with one count of sexual intercourse without consent, contrary to section 91 of Penal Code Act [Cap 135].
2. On 10 February 2017, you were found guilty of the commission of that offence and convicted by this Court after a three days trial.
3. Sexual intercourse without consent is one of the most serious crimes within the criminal law of Vanuatu. Section 91 of Penal Code Act is the relevant prohibiting and sanctioning provision. It provides for a maximum penalty of imprisonment for life.
4. The facts as found by this Court are contained in the Judgment on Verdict of this case. I am not going to set them all out again here. Suffice it to say this.
5. On Monday 11 April 2016 you had sexual intercourse with the complainant girl without her consent. It was about 7.00PM o'clock in the night. The victim girl was on her way home after she had charged a mobile phone in another village. She met you on the road. You were coming back from the nakamal after drinking kava. It was not a planned meeting.



6. You asked her for sex on the road. She refused to have sex with you that night. You forced her to have sex with you from the road to the bush area near Itaita pre-school area. She told you to report you to the chief. You told her to report you to the chief.
7. You had a knife and a stick (wood) with you. She tried to pass you on one side of the road. You blocked her way. She moved on the other side. You moved and blocked her. You used the stick (wood) to push the head of the girl into the bush for sex. You pulled her t-shirt and tore her red bra.
8. There was no one on the road. She was afraid of you because you had a knife and a piece of wood (stick) and she said nothing.
9. You pulled and pushed her to the bush area near Itaita School. She was standing there. You insisted asking her for sex. She refused. You wanted to remove her cloths. She refused you removing her cloths. She removed her panty herself. You removed your trousers yourself. You pushed her down on the grass and you penetrated her vagina with your penis and had sexual intercourse with her. She felt painful in her vagina. She closed her eyes when you had sex with her as she was afraid of you. At the time of sex, you put your knife and wood beside you on the ground.
10. You had sex with her again the same night on 11 April 2016. She felt painful, closed her eyes but she made no noise. She was afraid of you.
11. She returned home after 9.00PM o'clock and she went directly to sleep. It was too late that night to report you.
12. The First thing she did the next morning was she reported you to the chief of the village. On 12 April 2016, chief Iarapia called a meeting attended by all members of the community. You were also attended the meeting. The chief heard the girl and yourself. He decided to lodge a complaint to the police at Isangel, Tanna.



13. On 13 April 2016, Chief Iarapia lodged a complaint against you. You were then charged. The girl complainant made a statement against you.

14. After the trial you were found guilty and convicted.

15. When I sentence you, I read and consider the prosecution submissions and your defence lawyer submissions. I also read the pre-sentence report.

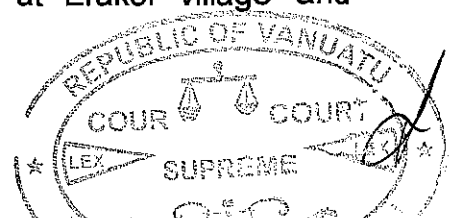
16. The prosecution refers to the Court guideline judgment (PP -v- Ali August [2000] VUSC 73; PP -v- Scott and Tula [2002] VUCA; PP -v- Gideon [2002] VUCA 7) and others. I thank the Prosecution Counsel for this assistance to the Court.

17. The gist of these cases is that:

- a. The offence of rape is always a most serious crime. Other than in wholly exceptional circumstances, rape calls for an immediate custodial sentence.
- b. The rights of women must be recognised maintained and upheld. It will only be in a most extreme of cases that suspension could ever be contemplated in a case of sexual abuse... Men must learn that they cannot obtain sexual gratification at the expense of the weak and the vulnerable.

18. The prosecution, after referring to the culpability of the offending and the aggravating features submitted that a starting point of 6-7 years should be appropriate. The prosecution submitted that an end sentence of 4-5 years imprisonment should be imposed on you in this case.

19. Your defence lawyer also submitted to the following effect:- You are 33 years old. You live in Naunula village, Middle Bush Tanna with your partner. You had a son who is under the custody of your father in - law at Etas, Efate and he is in grade 2. You have two young daughters with your former wife. Both daughters are under the custody of their mother at Erakor village and



attending Class 3 and 2 at Erakor Primary School. You provide child maintenance by way of school fees, providing food and monies. You travelled to Tanna in July 2015. You are an ordinary farmer. You rear pigs and cultivate land.

20. On your personal circumstances, you come from a family of 5. You are a French Class 6 school leaver. You were previously worked at Au Bon Marche No.2 Port Vila for 6 years. You have skills in carpentry. You are a hardworking man. You build houses to earn enough income to support your family and pay school fees for your children. You have good relationship with the village chief and the members of the community. You participate in community activities and regarded as a resourceful person. You construct community buildings for free on Tanna.

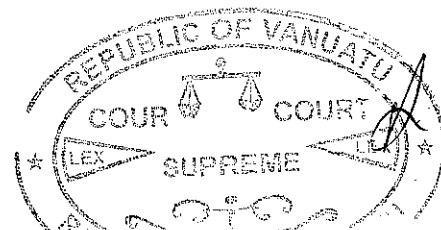
21. In mitigation, the following factors mitigate in your favour:-

- a. You are a first time offender;
- b. You cooperated well with the police;
- c. You have performed a custom compensation in the payment of:-
 - 1) 1 pig valued at VT 50,000
 - 2) 2 kava stems
 - 3) 1 traditional basket
 - 4) 4 of 20 yards garment
- d. You have previous good record
- e. You are remorseful
- f. You have the support of your chief and community.

22. I will consider all that in your sentencing.

23. Your lawyer provides the Court with following comparative sexual intercourse without consent case sentences with their summary facts, starting point and sentence:- PP v Renolds [2012] VUSC Criminal Case 130 of 2011; PP v Sawe [2010] VUSC 24; PP v Rihu [2011] VUSC 267; PP v Sobro [2009] VUSC 69; PP v Moli [2012] 11; PP v Koata [2009] VUSC 151). I thank your lawyer for this assistance.

24. Your lawyer raises as issues of technicalities the fact that the Civil Status Office recently confirmed the Complainant's date of birth to be 16 October, 1995 and your date of birth to be 24 June, 1987. I state this. I have conducted



a trial at Tanna Island in February 2017. I made findings of facts and convicted you on the basis of these facts as found by the Court. The age of the complainant or yours was not an issue before me at the trial. I am now sentencing you but I still do not have the benefit of seeing any birth certificate from the relevant authorities or Counsel and in particular Defence Counsel. I am ignoring the technicalities as raised and I remain with what the facts as found by the Court and the Pre-sentence report information reflect.

25. Your lawyer finally submitted that the Court will impose a starting point sentence of 4 years and an end sentence of 3 years.

26. In the present case, I consider the culpability of the offending, the seriousness and circumstances of the offending, on balancing between the aggravating features and the mitigating ones, the following aggravating factors stand out:-

- a. The age disparity between you (33 years old) and the girl complainant (18 years old) is of 15 years. You are a mature adult person. The complainant is a young girl. She needs protection.
- b. You held a knife and stick (wood) when you forced the girl to have sex with you.
- c. The girl was afraid of you because she saw the knife and stick. Although you were not using your knife during the action of force you have done to obtain your sexual gratification that night, the presence of the knife, by you holding it in the action in the night at the time, is a serious aggravating factor.
- d. You used the stick to stick and push the head of the girl complainant to the bush.
- e. You pulled her to the bush and broke her red bra.
- f. The offence occurred at night, she was alone and heading home.
- g. You were angry at the girl complainant because you spent money on her.



27. I assess the situation, a sentence of 6 years imprisonment is the appropriate starting point sentence. That is your starting point sentence based on all aggravating features, culpability and seriousness of offending.

28. In mitigation, I take into account that you cooperate well with the police. You are a first time offender and you have expressed remorse. I reduce your sentence of 6 years imprisonment by 6 months imprisonment making a balance of 5 years and 6 months imprisonment. I also take into consideration the fact that you have performed a custom compensation ceremony. (The fact that it was performed well before the trial is not considered here by me). I give a further allowance of 6 months reduction.

29. Your end sentence is 5 years imprisonment. I am told today in Court by Mr. Brian Live on behalf of the Defence Counsel that you have spent some time in custody before the trial. I do not get assistance from the Prosecution, the Defence lawyer apart from a day in the custody of the police at Isangel, Tanna. Mr Brian Livo informs me that you have already spent time in custody from April 2015 to July 2015. I accept that you have already spent 4 months and 1 day in custody. And they are now deducted to your end sentence of 5 years imprisonment. You have now an effective sentence of 4 years and 7 months to serve in custody.

30. I consider whether I should suspend your 4 years and 7 months imprisonment sentence. The circumstances of your offending do not justify a suspension.

31. You shall serve this sentence with immediate effect.

32. You have 14 days to appeal this sentence if you are unsatisfied with it.

**DATED at Port Vila, this 23rd day of March 2017
BY THE COURT**


**Vincent LUNABEK
Chief Justice**

